

(e) Article 39 - FLIGHT RISKS was added as follows:

"39. FLIGHT RISKS

(a) Each and every operation of any aircraft (including in the term "operation" tests of aircraft, test of equipment and accessories installed therein, and the operation of any power plant installed therein, whether or not the aircraft is in motion during the making of any such test or the operation of any such power plant) (1) to be furnished to the Government under this contract, or (2) furnished to the Contractor by the Government for the performance of this contract, whether conducted by the Contractor, by the Government or by any person authorized by the Government, shall be conducted at the risk of the Government insofar as loss or destruction of or damage to such aircraft (including equipment and accessories installed therein) is concerned, notwithstanding any other provision of this agreement; provided that if personnel conducting such operation are not either furnished by the Government or approved in writing by the Contracting Officer as defined herein, such operation shall be conducted at the risk of the Contractor and the Contractor shall be liable for loss and destruction of and damage to Government property occurring in the course of such operation, and further provided that the Contractor shall bear the risk of and, with respect to Government-owned property, shall be liable for loss and destruction of and damage to such aircraft, equipment and accessories occurring in the course of such operation and resulting from willful misconduct or failure to exercise good faith on the part of Contractor's managerial personnel as defined in Paragraph 30(f)(1) hereof.

(b) If prior to final acceptance by the Government any aircraft defined under paragraph (a)(1) above, are lost, destroyed, or damaged during such operation thereof and if the risk of such loss, damage or destruction is borne by the Government under paragraph (a) hereof, the Government shall have the right to terminate this contract with respect to such aircraft, or in case such aircraft is damaged, the Government may elect to require that such aircraft be restored by the Contractor to the condition in which it was immediately prior to such damage. If the Government elects to terminate this contract with respect to such aircraft, the Contractor shall deliver to the Government at the place at or from which such operation is conducted all or such parts of such aircraft as the Contracting Officer may designate, and the Contractor shall be paid the contract price for said aircraft less such amount as shall be determined by the Contracting Officer as the reasonable value of any portion of said aircraft not completed at the commencement of said operation. If the Government requires the aircraft, if damaged, to be restored as aforesaid, an equitable adjustment shall be made in the amount due under this contract and in the time required for its performance and this contract shall be modified in writing accordingly. Any disputes that may arise under the provisions of this Clause shall be determined as provided in the Clause hereof entitled "Disputes".

(c) This Clause shall be deemed to cover the operations by the Contractor of aircraft manufactured under the terms of this contract notwithstanding the fact that such an aircraft may have become the property of the Government and provided that such operations shall be subject to any authorizations or approval required in paragraph (a) above.